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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/691,650	10/17/2000	Mike Krivoruchko		3571

28390 7590 12/19/2003

MEDTRONIC AVE, INC.  
3576 UNOCAL PLACE  
SANTA ROSA, CA 95403

EXAMINER

MATTHEWS, WILLIAM H

ART UNIT PAPER NUMBER

3738

DATE MAILED: 12/19/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/691,650

Applicant(s)

KRIVORUCHKO ET AL.

Examiner

William H. Matthews (Howie)

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-- Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2-14 and 20-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-14 and 20-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 20.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 10-7-03 have been fully considered but they are not persuasive. Applicant contends the channel spacer disclosed by Lenker et al. is located on the outer catheter and therefore does not meet the claim limitation. Examiner disagrees because the newly added limitation recites:

“a spacer assembly disposed between the inner shaft and outer shaft, said spacer assembly including a channel spacer wherein said spacer assembly supports said inner shaft with respect to said outer shaft by eliminating slack when said outer shaft is moved with respect to said inner shaft.”

The limitation does not require the channel spacer to be located on the inner shaft. Furthermore, the spacer assembly of Lenker would provide support to the inner shaft as Applicant's spacer assembly and slack would be eliminated during movement of the outer and inner shafts.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 21, 22, and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 21 recites “said slot” which lacks proper antecedence.

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Claim 22 recites "said longitudinal slot section" which lacks proper antecedence.

Claim 24 recites "said longitudinal slot section" which lacks proper antecedence.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 20,23,24 are rejected under 35 U.S.C. 102(e) as being anticipated by Dwyer et al. US PN 6,395,017.

Dwyer et al. discloses in figures 10-12, lines 29-35 of col. 4 and lines 46 of col. 7 through line 14 of col. 9 a stent delivery system comprising stents (10,12), inner shaft (24), outer shaft (22), tip (26) located on the distal end of inner shaft (24), knob (74), and longitudinal and transverse slots (92,94,96,98).

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 2-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson et al. EP 1025813 A2 in view of Lenker et al. US PN 5,683,451.

Wilson et al. discloses in figures 1-12 a stent delivery system comprising inner (10) and outer (40) shafts, stent bed (24), tip (20), radiopaque marker on inner shaft (22), coupling member and valve relief (60) on outer shaft, handles (5,12,handle proximate to 5, 52,60, or Y-shaped coupling member) coupled to both inner and outer shafts (also see lines 20-30 of col. 11), radiopaque stent stop (22), radiopaque marker (46) on outer shaft, and the stent has segments at a plurality of radial positions. Note that the stent as claimed in claim 14 does not require the segments to be along a common radial axis or line. Wilson et al. lacks the express disclosure of channel spacers disposed between the inner and outer shafts. Lenker et al. teaches in figure 13 and lines 30-40 of column 9 a stent delivery system wherein channel spacers are disposed between the inner and outer shafts in order to provide additional column strength without a corresponding increase in stiffness for assisting implantation.

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the stent delivery device disclosed by Wilson et al. by incorporating channel spacers disposed between the inner and outer shafts in order to provide additional column strength without a corresponding increase in stiffness for assisting implantation.

3. Claims 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson et al. EP 1025813 A2 in view of Lenker et al. US PN 5,683,451 as applied to claim 2 above and in further view of Dwyer et al. US PN 6,395,017.

The stent delivery system disclosed by Wilson et al., as modified by Lenker et al. meets the structural limitations of claims 21-22 but lacks the express written disclosure of the handle comprising longitudinal and transverse slots. Dwyer et al. teaches in figures 11-12 a handle for a vascular prosthesis delivery system comprising longitudinal and transverse slots for controlled delivery of a vascular prosthesis.

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the stent delivery system handle disclosed by Wilson et al. by including longitudinal and transverse slots, as taught by Dwyer et al., in order to provide a more controlled delivery of a stent.

### ***Conclusion***

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Matthews (Howie) whose telephone number is 703-305-0316. The examiner can normally be reached on Mon-Fri 7:00-4:30 (Every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine M. McDermott can be reached on 703-308-2111. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-2708 for regular communications and (703) 305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



WHM

December 14, 2003



CORRINE McDERMOTT  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700